

O

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUDY N. GREEN,

Petitioner,

v.

L. MILUSNIC, Warden,

Respondent.

No. CV 14-629 JGB (FFM)

ORDER ACCEPTING FINDINGS,  
CONCLUSIONS AND  
RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, the Report and Recommendation of the United States Magistrate Judge, and Petitioner's Objections.

In her Objections, Petitioner insists that she has never had an unobstructed opportunity to assert her many ineffective assistance of counsel claims because the district court erroneously concluded that those claims were procedurally barred. The district court's conclusion, according to Petitioner, conflicts with recent United States Supreme Court precedent holding that, in some circumstances, the ineffective assistance of state post-conviction relief counsel can serve as cause to excuse the procedural default of an ineffective assistance of trial counsel claim. *Martinez v. Ryan*, \_\_ U.S. \_\_, 132 S. Ct. 1309, 1315, 182 L. Ed. 2d 272 (2012); *see also Trevino v. Thaler*, \_\_ U.S. \_\_, 133 S. Ct. 1911, 185 L. Ed. 2d 1044 (2013).

///

///

1       Petitioner's arguments, however, overlook one critical fact that makes *Martinez*  
2       and *Trevino* inapplicable to this case – namely, that the district court did not find that  
3       Petitioner's ineffective assistance of counsel claims were procedurally barred. Instead,  
4       the district court addressed the merits of those claims and concluded that each such  
5       claim failed on its merits. Although the district court found that two of Petitioner's  
6       claims were procedurally barred, neither of those claims involved a challenge to the  
7       performance of Petitioner's counsel. Instead, one of the claims involved a purported  
8       speedy trial violation, and the other claim involved a purported double jeopardy  
9       violation. (*See* Pet.'s Resp. to OSC, Attach. 3 at 4, 9 (Order Denying Petitioner's  
10      § 2255 Motion).) Accordingly, the record shows that Petitioner did, in fact, have an  
11      unobstructed shot at asserting her ineffective assistance of counsel claims.  
12      Consequently, none of those claims fits within § 2255's escape hatch.

13       Moreover, there is no merit to Petitioner's claim that she is actually innocent of  
14      the crimes of which she was convicted. Although Petitioner maintains her innocence,  
15      she alleges no actual facts to show her innocence. Instead, she contends that her  
16      counsel committed countless errors in defending the charges against her and that, had  
17      counsel performed more effectively, the jury would have found Petitioner not guilty of  
18      the charged crimes. In other words, her actual innocence argument is merely a re-hash  
19      of the ineffective assistance of counsel claims that the district court found to be lacking  
20      in merit. Put simply, Petitioner's allegations of attorney error have already been  
21      rejected on their respective merits and are insufficient to establish actual innocence.

22       Finally, there is likewise no merit to Petitioner's claims that changes in the law  
23      since her conviction render her actions non-criminal. Indeed, Petitioner offers no actual  
24      explanation of precisely how the cited changes in law affect her conviction. And, if  
25      Petitioner is challenging her conviction based on a new rule of constitutional law, any  
26      such challenge would have to be asserted in a § 2255 action, not a § 2241 action.

27      ///

1 Accordingly, after having considered the arguments above and all other  
2 arguments raised by Petitioner in her Objections, the Court concurs with and accepts the  
3 findings, conclusions and recommendations of the Magistrate Judge.

4 IT THEREFORE IS ORDERED that Judgment be entered dismissing this action  
5 with prejudice.

6  
7 DATED: May 20, 2014

A handwritten signature in black ink, appearing to read 'JGB', with a long horizontal flourish extending to the right.

8  
9  
10 JESUS G. BERNAL  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28